



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 23, 2009

Ms. Sharon Alexander  
Associate General Counsel  
Texas Department of Transportation  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR2009-13436

Dear Ms. Alexander

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 356540.

The Texas Department of Transportation (the "department") received a request for proposals submitted in response to the department's Invitation for Bid No. B442009018807000 and other related information. You state you have released some of the requested information in accordance with Open Records Letter No. 2009-09079 (2009). However, you state the previous determination did not address the submitted documents of one third party, Trend Offset Printing Services, Inc. ("Trend Offset"). Although the department raises no exception to disclosure on its own behalf, you state the submitted information may be subject to Trend Offset's proprietary interests. Thus, pursuant to section 552.305 of the Government Code, you have notified Trend Offset of the request and of the company's right to submit arguments to this office as to why the information should not be released. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances). We have reviewed the submitted information.

Initially, we note the requestor has specifically excluded from the request access device numbers. Therefore, any such information is not responsive to the request for information. The department need not release non-responsive information in response to this request and this ruling will not address it.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why

information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). However, as of the date of this letter, Trend Offset has not submitted comments to this office explaining why any portion of the responsive information relating to it should not be released to the requestor. Therefore, we have no basis to conclude that Trend Offset has a protected proprietary interest in the responsive information, and none of it may be withheld on that basis. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

We note that some of the responsive information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990). Accordingly, as no exceptions to disclosure have been raised, the department must release the responsive information, but any information protected by copyright must be released in accordance with copyright law.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/rl

Ref: ID# 356540

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

c: Trend Offset Printing Services, Inc.  
2323 McDaniel Drive  
Carrollton, Texas 75006  
(w/o enclosures)